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THE CITEJA MEETING IN PARIS IN JANUARY, 1939

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The First, Second and Third Commissions of the CITEJA met in Paris on January 23 and 24, 1939, in order to consider the matters referred to them by the 13th Plenary Session at Brussels on September 28th, 1938, and prepare for the 14th Plenary Session, which will be held in September, 1939.

The Brussels meeting, held at the end of the Fourth International Diplomatic Conference on Private Air Law, in the atmosphere which preceded in the Munich Agreement, had been brief; it had adopted six resolutions, with the following purport: No. 97 adjourned the question of the collaboration of CITEJA in the interpretation and execution of Private Air Law Conventions and the consideration of the draft convention on the status of the crew to the 14th Session. No. 98 instructed the First Commission to examine the question of the effect of the decisions of courts indicated as competent in the existing Conventions. No. 99 instructed the Second Commission to examine proposals for the revision of the Warsaw Convention of 1929 as to Air Transport. No. 100 instructed the Third Commission to redraft the Land Salvage Convention in the light of the final text of the Salvage at Sea Convention just approved by the Fourth Diplomatic Conference and signed on the same day by many of the plenipotentiaries there present. No. 101 instructed the Third Commission to take up the general study of aerial insurances.

The anxiety of the experts to return to their homes as quickly as possible, in the event of hostilities in Czechoslovakia, was so great that it was impossible to find even a brief moment for the selection of Reporters as to the effect of decisions, the Warsaw revision, and the study of insurance. As M. Vivent was already Reporter for Land Salvage, his designation continued. Resolution No. 102 accordingly instructed the First, Second and Third Commissions to meet at Paris in January, and the meetings were held the week after a session of the CINA for which several of the experts had to travel to Paris anyway.

In the interval, at the request of the Italian delegation, the subject of Mortgages on Aircraft was revived, having been dor-

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mant since 1931. It was understood that this was restored to the agenda preparatory to a revival of the projected convention on the Aeronautical Register, which has likewise been inactive since 1931.

Twenty-six experts from 13 countries attended the Paris sessions, as follows: U. S. A., Messrs. Knauth and Mulligan; Belgium, M. Pholien; Denmark, Messrs. Ingerslev and Gregersen; France, Prof. de la Pradelle, Prof. Ripert, M. Vivent and M. Garnault; Great Britain, Sir Maurice Amos and Dr. A. W. Brown; Great Germany, Dr. Wegerdt, Prof. Riese and Dr. Bülow; Hungary, M. Lupkovics; Italy, Senator Cogliolo, Prof. Ambrosini, Prof. Bosco and Prof. Cacopardo; Japan, MM. Moriya and MM. Komabayas; Netherlands, MM. Wolterbeek-Muller and Schonfeld; Poland, M. Babinski; Switzerland, M. Clerc; and Czechoslovakia, Dr. Netik.

THE AUTHORITY OF JUDGMENTS, OR EFFECT OF COURT DECISIONS

Professor Bosco of Italy submitted a memorandum[1] which discussed the situations resulting from the fact that different victims of the same disaster may elect to sue in different jurisdictions. Thus one court might hold the defendant free of liability, whereas a second might hold him liable but entitled to limit his liability, and a third might hold him liable without limit. When successful plaintiffs endeavor to enforce judgments of unequal extent as foreign judgments against limited assets, a problem of ranking is presented. And if the effort is made to enforce a foreign judgment in a State where the local court has already decided that the defendant is without liability, a conflict might arise as to the law of the case. The discussion developed along two lines: as to the possibility of litigating an issue once and for all, either by forcing the plaintiffs into a concourse, or by postponing the suits after the first one for a certain time, in order to enable the court first seized to adjudicate the issue, with or without right of intervention by the other parties, and with binding effect upon all; or by submitting cases of private air law under the Conventions to some single tribunal selected or created for the purpose, so that in all events there will be one litigation at one time, in one place, and with one result. The other line considered the possibility of agreeing to a simplified and uniform procedure for the enforcement of judgments under the Conventions as foreign judgments.

While no bi-lateral or multi-lateral agreements have yet been made in any field to bring about an international concourse of plain-

1. CITEJA Doc. No. 369.

tiffs, the idea has been considered, for example, in respect of the shipowners' limitation of liability laws, which have in many countries been brought into harmony through the Brussels Convention of 1924 for the unification of certain rules relating to that topic. It has also been bruited in matters of bankruptcy and also as to the winding up of companies conducting an international business. A certain degree of co-operation has been attained in the winding up of insurance companies. See, for instance, *In re Liquidation of Norske Lloyd Insurance Company,*[2] where excess assets in New York were claimed by both the British and the Norwegian liquidator.

The Shipowners' Limitation Convention of 1924, the Rome Convention as to Surface Damage by Aircraft of 1933, and the Brussels Convention as to Salvage of Aircraft at Sea of 1938 each contains provisions authorizing a defendant who is sued in two or more jurisdictions to present a statement to the court as to the total of claims with which he is faced, for the purpose of preventing his limited liability from being exceeded. The European states adhering to the Berne Railway Conventions have agreed to enforce judgments under those Conventions to a limited extent. Several European countries have concluded bilateral agreements as to the enforcement of each others' judgments — notably England and France, and France and Italy. These ideas thus appear to be capable of general solution on an intra-European basis, and can be solved by any two states on a bilateral basis. A general solution on an inter-continental basis presents great difficulties, and may not be expedient from the point of view of delay and expense. From the point of view of the plaintiff, for whose redress these rights are created, complete freedom to proceed in any suitable forum where jurisdiction of the defendant can be obtained is of primary importance. But whenever a system of limited liability is set up for the protection of the defendant, an orderly method of working out the administration of the system is desirable and should be provided, at least to the extent of establishing the broader indications. In the absence of any international judicial conference to consider administrative rules, it would seem proper for such interested organizations as the CITEJA and the Comité Maritime International to study them. The upshot of the discussion was that Professor Bosco, of the University of Rome, was selected as Reporter, and instructed to make a study and bring in a report on this whole group of problems. The case-law material upon these points is scanty;

2. 242 N. Y. 142, 1927 Amer. Mar. Cas. 217.

and the Reporter would greatly appreciate a reference to any material that may exist.

CHATTEL MORTGAGES OF AIRCRAFT PROPERTY, OTHER PLEDGES, AND LIENS

This subject was studied by the CITEJA for several years prior to 1931, in which year Dr. Richter, who was at that time a German expert, brought in a report.[3] It was thought at that time that there would be a large amount of financing of civil aircraft purchases by means of chattel mortgages and pledges; and in that connection Senator Amadeo Giannini, the senior Italian expert, made a related study looking towards a convention for an internationally co-ordinated system of Aeronautic Registers, by means of which mortgages, pledges and liens pertaining to aircraft could be officially registered. Interest in the matter died out, however, and it has not been followed up. A law of this character exists in Italy, and the Italian experts are interested in reviving the idea of a convention. M. Garnault, a French expert,[4] was chosen as Reporter to make a fresh investigation of the situation.

The following table illustrates the ranking of liens which come ahead of the mortgage under (1) the Richter plan of 1931 for aircraft, (2) the Brussels Convention for the Unification of Certain Rules relating to Ship Mortgages and Maritime Liens of 1924,[5] and (3) the American Preferred Ship Mortgage and Maritime Lien Act of 1920. It will be noted that Dr. Richter omits a lien for the wages of the aircraft commander and crew: he justified this by providing that the mortgage may not extend to the pledge of earnings—passenger fares and freight money—which thus remain free assets against which the employed personnel may proceed for their wages, so that a lien is not needed. The principal novelty of his plan is the preference of necessary repairs.

3. CITEJA Doc. 162, Annex B.

4. M. Garnault is a lawyer in Paris; he may be addressed at 134 rue de Grenelle.

5. Now in effect in France, Belgium, Holland, Norway, Sweden, Denmark, Finland, Estonia, Poland, Splain, Portugal, Italy, Hungary, Brazil.

Mortgages and Liens — Comparative Rankings

Air—Draft of 1933	*Maritime Convention of 1924*	*U.S.A.—Maritime Statutes, 1920*
court costs	law costs	legal costs
airport fees	tonnage, light, harbor dues pilotage dues	tonnage and light dues
	taxes and charges of a similar nature	taxes
(wage claims may be asserted against unpledged freight)	wages of master and crew	wages of crew, not master
	wages of "other persons employed in the service of the ship"	wages of stevedores directly employed by the shipmaster, not through an independent contractor
(aerial collision convention under discussion)	collision liability	collision liability
	contribution in General Average	contribution in General Average
(salvage at sea convention awaiting ratification)	liability to pay salvage	liability to pay salvage
(Warsaw convention now in force)	Liability for cargo loss and damage	Tort liability for cargo loss and damage
(air personnel convention now under discussion)	liability for bodily injury (incl. death?) incl. assault	liability for personal (i. e., bodily) injury, and for wrongful death. Statute denies lien for assault
	watching and maintenance at the "last port" (i. e., port of sale?)	no watchman's lien in U.S.A. maritime law.
	damage to harbor works and docks	not within U.S.A. admiralty jurisdiction
necessary repairs	(not preferred)	(not preferred)
The aerial mortgage registered on the Register	The registered ship mortgage	The Preferred Ship Mortgage registered in the home port
Subordinate to the mortgage are liens for		
possessory liens for repairs not necessary	disbursements of master, general agent and charterer away from home port	repair liens in rem as well as possessory
	bill of lading claims generally	Master's and Owner's Bs/l only, unless ratified by sailing with cargo
		supply of necessaries

CONTEMPLATED AMENDMENT OR REVISION OF THE WARSAW CONVENTION

The Warsaw Convention, relating to Air Transport of Passengers and Goods, was signed ten years ago by the plenipotentiaries to the Second International Diplomatic Conference on Private Air Law. It has met with widespread success, having been ratified or adhered to by some 32 states, including every state in Europe except Portugal, and many states in other continents, including the United States, Mexico, Brazil, Australia, Southern Rhodesia, India, and the Soviet. It has been in general effect since February 13, 1933; and a few cases under its provisions have been litigated in appellate courts in England and Italy. It is now suggested that a study be commenced as to amendments which may be desired in the light of experience. The International Air Transport Association (IATA), whose membership includes all the great airlines of Europe, has complained for some years that the requirements as to the contents of the ticket and airway bill are needlessly cumbersome, and has protested against the provision as to liability for delay. Consequently the CITEJA proposes to receive suggestions and commence a study, for which Sir Maurice Amos, Professor of Comparative Law at London University, has been named Reporter.

Considering the elaborate provisions of the Convention, and its wide scope, it has been a remarkably successful document. Any suggestions as to its amendment might be grouped as major and minor. The American delegates suggested that any proposals received should be segregated accordingly. It may very well turn out to be possible to secure general agreement upon some minor and clarifying amendments, which would be convenient for all concerned. But it might prove exceedingly difficult to introduce any alterations which could be regarded as altering the basis of the general consensus on which the Convention rests. The preliminary grouping of any proposed amendments is therefore of great importance.

As a first basis of study, the British delegation suggested 26 points for study, and the Italian delegation supported three suggestions. The Reporter would be glad to hear of any further proposals. It is the present intention to bring in a preliminary report at the time of the plenary session in September, 1939, for which purpose the sub-committee charged with this matter will hold a special meeting at that time if the Report is ready.

The 26 British points relate to the definition of "international carriage," the simplification of the required form of the ticket, bag-

gage check and airway bill, elimination of the severe penalty for departing from these prescribed forms, various aspects of the airway bill as a document of title, the notion of "risques de l'air," the liability for delay, the rules as to interest on damages, costs, and other procedural matters, and various words which, in the original French or in various translations, have caused some difficulties of interpretation.

Salvage of Aircraft in Distress on Land

M. Vivent, Sous-Directeur of Civil Aviation in France and the Reporter of this subject, brought in a third draft text of the proposed convention, together with a brief Report.[6] In this new draft, which supersedes the one prepared during the discussion at the meetings in Paris in May, 1938, the Reporter had taken advantage of considerable portions of the text of the Salvage at Sea Convention signed at Brussels in September, 1938. The new text was discussed informally, article by article, and as a result Articles 2 and 3 were considerably altered and finally re-committed for redrafting; the tendency was to bring the text and the underlying principles into still closer conformity with the Brussels Convention. A number of other passages were also altered; and a fourth text is now in preparation, to be submitted in the course of the Spring as the basis of further efforts.

The American delegation submitted a memorandum[7] developing the doubts expressed by previous American delegations as to whether there is any interest in this subject or any need for pursuing it. The points made were briefly as follows:

(1) Salvage on land is wholly novel and is not at present known in any other field of terrene law. (2) Property on land lies where it falls; it is not generally lost forever like property which falls into the sea. (3) As to the proposal of zones, the draft seemed to make it possible that an area might be a "salvage area" as to the ratifying States without any declaration by the sovereign of such area and perhaps even in spite of his objection, which would involve a derogation of sovereignty. (4) The declaration of "Salvage Zones" would give opportunity for further reducing, or hampering, the freedom of air navigation, already much restricted by national policies relating to air space reservations, or prohibited areas, special conditions imposed upon tourist flights, etc. (5) If assistance is needed in remote areas, the proper first approach would be by an air patrol similar to a coast guard patrol; this would be a matter of

6. CITEJA Doc. No. 370.
7. CITEJA Doc. 371.

public law, and not a matter of private air law, and hence not within the competency of CITEJA. (6) The cost of such a public service should not be imposed on private parties, with sanctions or penalties; and the creation of new sources of expense in the operation of aircraft should be avoided. The experience of the past shows that aid is readily given in the search for fallen aircraft without any expense whatever, and airmen may be depended upon to help each other as much as they can. (7) Even as to salvage at sea, where the problem was merely to coordinate the rights and duties in respect of aircraft with those already existing in respect of surface vessels, the Brussels Conference had shown a tendency to reduce the rewards (which are the basis of the idea) to such small amounts as to make the proposal uninteresting; even greater opposition to the completely novel idea of land salvage might be expected.

The sub-committee took the position that it had been instructed by the 13th Plenary Session to continue with the study of the draft convention; and that it would not re-examine the question of policy at this time. The American memorandum was accordingly placed upon the agenda of the forthcoming 14th plenary session. The principal interest in this subject appears to be expressed by the Italian and French delegates; several of the other delegations appear to be indifferent towards it.

Aeronautical Insurances

In accordance with Resolution No. 101, adopted at the 13th Session, the agenda called for an exchange of views on the general topic of aeronautical insurances. No general discussion of this matter by CITEJA had taken place since 1929. In that year Mr. Carlos da Silva Costa, at that time a Brazilian expert member of CITEJA, submitted a report[8] based upon replies received to an elaborate questionnaire sent out in 1927, ranging widely over many topics. This was discussed at the 1929 Session (CITEJA Doc. No. 5). A reason for reviving the subject was expressed by the German expert Dr. Riese. He stated that a serious situation has developed in Europe because of the divergent practices as to the terms on which passengers are carried. Some airlines provide an insurance coverage as part of the ticket, while others do not. As all the lines act as agents for each other in the sale of tickets, and as the service schedules are divided between the lines, it is impossible for a passenger who buys his ticket from carrier A to know whether he will be carried in an aircraft of carrier A or B or C, nor to know which

8. CITEJA Doc. 4.

terms of carriage will apply in respect of insurance coverage. This is most unfair, and a source of complaint. It seems evident that one thought behind the matter may be that the insurance practices of the lines which include coverage in the ticket might be extended to all the lines in the same services. The preparation of a report was entrusted to M. Clerc, who is chief of the administrative section of the Swiss Federal Aviation Office at Berne.

Concluding Recommendations

The American delegates renewed the recommendation made by their predecessors that the CITEJA should meet only once a year, instead of twice or even oftener, as has been the custom for some years past. The effort of attending two meetings a year is considerable, and the delay due to efforts to keep in touch with the work by mail is a handicap to American co-operation.

They also recommended that the CITEJA seek more direct participation in its work by diversified representation from other groups concerned with civil air navigation. In this connection they urged that the study of insurance should be left to such organizations as the International Association of Aviation Underwriters and the International Air Traffic Association, and that the matter of salvage on land should be handled in consultation with experts interested in the practical operation of aircraft in remote desert and wilderness regions. Likewise they expressed the view that the study of foreign judgments should be taken up through the International Law Association and other groups interested in other phases of the same problems. It is hoped that these views, repeatedly emphasized, will begin to bear fruit, and enable all the interested branches of the great American civil aviation industry to bring their views to bear more directly upon the important work which the CITEJA is doing.